85-368 (1)

Supreme Court, U.S.
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CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

GORDON LEE SEIBOLD

PETITIONER/PLAINTIFF

V.

UNR-ROHN COMPANY

RESPONDENT/DEFENDANT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Counsel for the Plaintiff (Pro-se):

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58 pp

QUESTION PRESENTED FOR REVIEW

Has, or has not, justice been rendered to the fullest possible degree by the lower Courts in their dismissal of the appeal and the complaint?

TABLE OF CONTENTS (SUBJECT INDEX)

	Page No.
Official and Unofficial Reports.	1
Statement of Jurisdictional Grounds	2
U.S. Constitutional Provisions and Statutes Involved	3
Statement of the Case	5
Jurisdiction in Court of First Instance	6
Reasons for Allowing the Writ ..	7
Affidavit of Service	37
Appendix (N-14 thru N-24 inclusive)	

TABLE OF AUTHORITIES

Constitutional Provisions

Article VI 3,18,21,34,35	
Article III, Sections 1 and 2 ..	4,7,18
Article I, Section 8	4,7,18,21
Amendment I 5,19,20,22	
Amendment V 4,6,7,19	
Amendment VII	5,19,22

Statutes and Rules

U.S.C.S. 28 §1254 (1)	3
U.S.C.S. 28 §1915 (d)	24
U.S.C.S. 28 §1343 (1)	6,31
U.S.C.S. 28 §§1291-1337	21
Federal Rules of Civil Procedure 2	27
Rule 17(a) 'Rules of the Supreme Court of the United States' ..	9

Cases and Textbooks

	Page No.
Lucien V. Roegner, 622 F.2d625 (7th Cir. 1982)	15,26
Schneider V. Smith, Wash. 1968, 88 S.Ct. 682, 390 U.S. 17, 19L.Ed.2d799	20
Kelly V. Page, C. A. Ga. 1964, 335 F.2d.114	20
Bankers Trust Co. V. Texas P.R. Co. (1916) 241 U.S. 295, 60L.Ed.1010, 36 S.Ct. 569	21
State V. Heinz, 223 Iowa 1241, 275 NW 10, 114 ALR 959	25
Sall V. State, 157 Neb 688, 61 NW 2d256	25
Brown V. Circuit Judge Kalamazoo County, 75 Mich 274, 42 NW 831 .	28
Estate of Folwell, 68 N.J. Eq. 728, 62A414	28
Gilles V. Dept. Human Resources Development, 11 Cal. 3d.313, 113 Ca. Rptr. 374, 380,521 P.2d110	29
American Jurisprudence (2nd Ed. - 1966) Vol. 27	34
Black's Law Dictionary (5th Ed. - 1979)	20,27,29
Ballantine's Law Dictionary (3rd Ed. - 1969)	25,28
Black's Law Dictionary (4th Ed. - 1951)	27
A Dictionary of English Law by Sweet (1882)	28
Rules of the Supreme Court of the United States (June 30, 1980) ..	9

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UNR-ROHN COMPANY[1/]
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Petitioner, Gordon Lee Seibold, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on January 15, 1985.

OFFICIAL AND UNOFFICIAL REPORTS

To the best of the Petitioner's knowledge there are no official or unofficial reports of any opinions delivered in the lower Courts.

[1/] UNR-Rohn Company is believed to be an unincorporated division of UNR, Inc.

STATEMENT OF JURISDICTIONAL GROUNDS

The Court of Appeals entered its Memorandum decision affirming the denial of Petitioners motion for leave to proceed on appeal in forma pauperis and ordering that the appeal is frivolous and that it is dismissed (APPENDIX N-21).

The Court of Appeals denied the petition for rehearing on February 21, 1985 (APPENDIX N-23).

The Petitioner did not suggest that the rehearing be en banc because at that time he believed that the only reason for the dismissal of the appeal was his failure to have paid the docketing (filing) fee, and did not want to take the time of all the judges to consider so relatively trivial a point. However, since he was not certain of this, in the petition for rehearing he counter-argues the dismissal orders of the lower Courts.

The jurisdiction of this Court is invoked under Title 28 United States Code Service § 1254 (1) which states:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

The jurisdiction of this Court is also invoked under Article III, Sections 1 and 2 of the U.S. Constitution.

U.S. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The U.S. Constitutional provisions and statutes involved in this case are listed below verbatim. If only a part of the provision or statute is involved, the part is underlined.

Article VI

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary

notwithstanding."

Article III, Section 1

"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Article III, Section 2

"The judicial Power shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority. The Supreme Court shall have appellate jurisdiction both as to Law and Fact."

Article I, Section 8

"The Congress shall have power to constitute Tribunals inferior to the supreme Court."

Amendment V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public

use, without just compensation."

Amendment I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances."

Amendment VII

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to rules of common law."

U.S.C.S. 28 § 1343 (1)

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person to recover damages for injury to his person or property."

STATEMENT OF CASE

On January 15, 1985 the U.S. Court of Appeals Seventh Circuit, issued order dismissing the appeal (APPENDIX N-21) and on February 21, 1985 issued order denying the petition for rehearing (APPENDIX N-23).

In the Petitioner's opinion he was denied due process of law, as guaranteed by the Fifth Amendment of the U.S. Constitution, by the dismissal of the complaint which, also in the Petitioner's opinion, involved irregular and inconsistent procedure by the lower Courts (as described below in 'Reasons for Allowing the Writ').

Due to the foregoing and to rebuttals presented in 'Reasons for Allowing the Writ', the Petitioner is of the opinion that justice has not been rendered to the fullest possible degree in the dismissal of this complaint.

BASIS FOR FEDERAL JURISDICTION IN COURT OF FIRST INSTANCE

The basis for federal jurisdiction in the court of first instance (the District Court) is U.S.C.S. 28 § 1343 (1) which states:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person to recover damages for injury to his person or property."

Additional basis is also found in Article I, Section 8 and Article III, Section 1 of the U.S. Constitution.

REASONS FOR ALLOWING THE WRIT

The question presented for review in the prefix of this petition for issue of writ of certiorari is 'Has, or has not, justice been rendered to the fullest possible degree by the lower Courts in their dismissal of the appeal and the complaint?'

Three questions subsidiary to this question are:

(1) Has, or has not, 'due process of law' (as provided by the Fifth Amendment of the U.S. Constitution) been denied by the procedure of the lower Courts (which in the Petitioner's opinion was irregular and inconsistent) in the dismissal of the appeal and the complaint?

(2) Does, ordoes not, the District Court have the jurisdiction to hear the complaint?

(3) Is, or is not, the appeal frivolous?

The Petitioner contends that:

(1) Justice has not been rendered to the fullest possible degree by the lower Courts' dismissal of the appeal and the complaint.

(2) 'Due process of law' has been denied by the procedure of the lower Courts in the dismissal of the appeal and the complaint.

(3) The District Court has the jurisdiction to hear the complaint.

(4) The appeal is not frivolous.

The Petitioner bases the contentions on his arguments presented in this section of the petition which is divided into the following listed parts:

I - Denial of 'due process of law' by the lower Courts' procedure.

II - Violation of certain provisions of the U.S. Constitution by the

lower Courts' dismissal of the complaint.

III - Rebuttal to the Court of Appeals' dismissal order.

IV - Rebuttal to the District Courts' dismissal order.

Part I

The Petitioner is of the opinion that he has been denied 'due process of law' and that the denial was caused by certain irregular and inconsistent documented procedure and issued orders of the U.S. Court of Appeals and the U.S. District Court which have so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision (Rule 17 (a) of 'Rules of the Supreme Court of the United States', adopted April 14, 1980 and effective June 30, 1980).

The irregular and inconsistent procedure and issued orders are listed and described as follows:

(1) In its order denying the petition for rehearing (APPENDIX N-23), the Court of Appeals states:

> "Plaintiff asserts that our dismissal was erroneous, because he paid the docketing fees."

The Petitioner does not make that assertion in the petition for rehearing nor in any other document.

What he does assert in the petition for rehearing are counter-arguments to the District Court's orders (APPENDICES N-15 thru N-17 inclusive). The orders state that it (the District Court) lacks the jurisdiction to hear the complaint and that the appeal is frivolous (the Court of Appeals concurs with these orders).

The Court of Appeals makes no reference to the Petitioner's counter-arguments in its order denying the petition for rehearing.

The Court of Appeals makes reference to an assertion that the Petitioner did not make and makes no reference to an assertion that he did make.

(2) In its order denying the motion for leave to proceed on appeal in forma pauperis and dismissing the appeal (APPENDIX N-21) the Court of Appeals states that the appeal is 'legally frivolous'.

In its order denying the petition for rehearing (APPENDIX N-23) the Court states that the appeal is 'frivolous'. The conclusions of the Court's orders differ on the same point of deliberation.

(3) Upon the Court of Appeals' order of denial of motion for leave to proceed on appeal in forma pauperis and dismissal of the appeal (APPENDIX N-21), it did not grant the opportunity for the Petitioner to pay the filing (docketing) fee and proceed, as did the District

Court (see District Court docket sheet, APPENDIX N-18).

The Courts are inconsistent with each other in their procedure.

(4) At the time of the filing of the complaint, the District Court denied the motion for leave to proceed in forma pauperis, but allowed twenty one (21) days to pay the filing fee and proceed, which the Petitioner did (see District Court docket sheet, APPENDIX N-18).

Upon that Court's oral order denying the motion to alter or amend judgment and to hold the case in abeyance (APPENDIX N-18), the Petitioner appealed the decision to the Court of Appeals with motion for leav to proceed on appeal in forma pauperis submitted to the District Court.

Upon the District Court's order of denial of motion for leave to proceed on appeal in forma pauperis (APPENDIX N-17), the Petitioner immediately

filed the motion (with a copy of the District Court's order of denial attached as exhibit) in the Court of Appeals by certified mail. (The Petitioner has in his possession a copy of the mailing receipt, signed by an agent of the Court, establishing that the motion was received by that Court four (4) days after the mailing).

Six (6) months later after receiving and accepting a total of twenty four (24) motions by both parties and issuing two (2) orders of stay for the Defendant (APPENDICES N-19 & N-20), the Court issued the order of denial of motion for leave to proceed on appeal in forma pauperis and dismissal of the appeal (APPENDIX N-21).

As stated above, on two separate occasions the District Court deliberated on the motion for leave to proceed in forma pauperis, the first

deliberation requiring eleven (11) days and the second ten (10) days, whereas the Court of Appeals required six (6) months for the same deliberation.

The Petitioner is also of the opinion that the Court of Appeals should not have accepted motions nor issued orders until it had either granted the motion for leave to proceed on appeal in forma pauperis or received payment of the filing (docketing) fee.

(5) Upon receiving the Court of Appeal's order denying the motion for leave to proceed on appeal in forma pauperis and dismissing the appeal (APPENDIX N-21), the Petitioner immediately paid the filing (docketing) fee to the District Court and filed the petition for rehearing in the Court of Appeals with a copy of the receipt of payment attached as exhibit. Fifteen (15) days before the Court issued its

order denying the petition, it issued the mandate (APPENDIX N-22).

The Petitioner is of the opinion that the mandate should not have been issued before the Court had acted on the petition for rehearing.

(6) In the Court of Appeal's order of January 15, 1985 (APPENDIX N-21) it is stated that the motion for leave to proceed on appeal in forma pauperis is denied on the ground that 'the appeal is legally frivolous for the reason stated by the District Court.'

In the District Court's order of July 31, 1984 (APPENDIX N-17), denying motion for leave to proceed on appeal in forma pauperis, it is stated:

> "In reviewing the Plaintiff's request, the Court must determine if the Plaintiff's claim is frivolous and deny the request if found so. Lucien V. Roegner, 622F.2d625 (7th Cir. 1982)."
>
> (The emphasis on 'must' added by the Petitioner)

It is not stated in the District Court's order of July 31, 1984 (nor in any other order of either lower Court) that the complaint is frivolous.

The District Court finds that the appeal is frivolous, but is basing the finding on an order which it has never decreed (that the claim (complaint) is frivolous).

The Court of Appeals concurs with the District Court's finding.

(7) As counter-argument to the Defendant's motion for dismissal of the complaint, the Petitioner filed in the District Court motions containing supportive provisions of the U.S. Constitution. The Defendant filed counter-motions contending that the provisions are irrelevant to the case.

In none of their orders dismissing the appeal and the complaint (APPENDICES

N-15 thru N-18 inclusive and N-21 & N-23) neither the Court of Appeals nor the District Court ruled on the relevancy of the Constitutional provisions.

All of the above assertions (1 thru 7) are substantiated by the Courts documents (identified or referred to in the assertions) which consist of Courts orders and docket sheets, motions, and petitions.

One copy of each of the Courts orders and docket sheets are attached hereto as appendix and made a part hereof.

The petitions and motions of the said Courts documents, presumedly, are in the files of the lower Courts.

The Petitioner possesses a copy of all his motions and petitions and, presumedly, a copy of all Court orders and Defendant motions filed in this litigation.

Part II

The following provisions of the U.S. Constitution provide both a general and a specific basis for the hearing of the complaint, which, in the Petitioner's opinion, he has been denied through the dismissal action of the lower Courts.

Article VI states that the U.S. Constitution shall be the supreme law of the land.

Article III, Section 1 states that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.

Article I, Section 8 states that the Congress shall have power to constitute tribunals inferior to the Supreme Court.

Article III, Section 2 states that the judicial power shall extend to all

cases in law and equity arising under the U.S. Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

The Supreme Court shall have appellate jurisdiction both as to law and fact.

Amendment V states that no person shall be deprived of property without due process of law.

Amendment I states that the Congress shall make no law abridging the right of the people to petition the Government for a redress of grievances.

Amendment VII states that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

(the monetary value of the relief sought in this complaint exceeds twenty dollars)

(The emphasis of the above provisions added by the Petitioner)

If it be argued that Amendment I provides for a group of people to petition, rather than the individual, the Petitioner counter-argues with the following decisions of the U.S. Supreme Court and a lower Court:

> "This amendment's ban against Congress abridging freedom of speech, right peaceably to assemble and to petition, and associational freedom that goes with these rights creates a preserve where views of the individuals are made inviolate. Schneider V Smith, Wash. 1968, 88 S. Ct. 682, 390 U.S. 17, 19L.Ed.2d799."
>
> "A citizen or group of citizens may assemble and petition for redress of their grievances. Kelly V Page, C.A.Ga. 1964, 335 F.2d114."
>
> (The emphasis of the texts added by the Petitioner)

If it be argued that the meaning of 'petition' in Amendment I is vague, the Petitioner counter-argues with the definition of 'petition' from 'Black's Law Dictionary' (5th Ed. - 1979):

"A formal written application to a court requesting judicial action on a certain matter."

The following is from U.S.C.S. 28 §§ 1291-1337, Interpretive Notes and Decisions, I (In General), A,4:

"Congress possesses power under Constitution to invest subordinate Federal courts with original jurisdiction of all suits at law or in equity arising under the Constitution, laws or treaties of the United States. Bankers Trust Co. V Texas & P.R. Co. (1916) 241 U.S. 295, 60L.Ed.1010, 36 S. Ct. 569."

(This suit arises under Amendment I of the U.S. Constitution)

Therefore, since the Supreme Law of the Land (Article VI of the U.S. Constitution) states that the Congress has control of all the Federal courts inferior to the Supreme Court (Article I, Section 8 of the U.S. Constitution and U.S.C.S. 28 §§ 1291-1337, Interpretive Notes and Decisions, I (In General), A,4) and that the Congress shall make no law abridging the right of the people to petition the Government for a

redress of grievances (Amendment I of the U.S. Constitution), it follows that the inferior courts (including the U.S. District Courts and U.S. Courts of Appeals), too, shall not abridge the right of the people to petition the Government for a redress of grievances.

If it be argued that the petitioner was allowed to exercise the right by the filing of his complaint (petition), he contends that the complaint was not heard on the basis that he was denied his constitutional right to trial by jury.

The complaint demands trial by jury as provided by Amendment VII of the U.S. Constitution.

If it be argued that the complaint was heard on the basis that the assertions therein and of the motions filed thereafter were stated in the District Court's dismissal order, the Petitioner counter-argues with the following

listed rebuttals:

(1) The complaint could not have been heard, because the District Court's dismissal order states that it lacks the jurisdiction to hear the complaint. (Note - the foregoing must not be construed to mean that the Petitioner agrees with the District Court's Statement that it lacks the jurisdiction to hear the complaint)

(2) As auxiliary rebuttal, the District Court's dismissal order does not state all of the assertions of the Petitioner's motions. Also the Petitioner does not present all of his assertions in the complaint or the motions filed thereafter, because some are being retained for a more timely presentation before the jury.

Part III

This part of 'Reasons for Allowing the Writ'

is direct rebuttal to the Court of Appeal's dismissal order, listed and described as follows:

(1) It is ordered in the Court of Appeals order of January 15, 1985 (APPENDIX N-21) that the appeal is dismissed on the basis of 28 U.S.C. § 1915 (d).

That law, updated to May, 1984 through Cumulative Supplement with no change, states:

> "The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious."

The allegation of poverty, as documented in the records of the lower Courts, is not untrue.

The action is not frivolous, based on the above counter-argument* and the counter-arguments documented in the records of the lower Courts. * (See Part I, Item no. 6)

The action is not malicious, based on the legal definition of 'malice' from 'Ballentine's Law Dictionary' (3rd Ed.-1969) which states:

> "That state of mind which prompts the intentional doing of a wrongful act without legal justification or excuse. State V Heinz, 223 Iowa 1241, 275 NW 10, 114 ALR 959; Sall V State, 157 Neb 688, 61 NW 2d 256."
>
> (The emphasis added by the Petitioner)

The Petitioner's intention in this litigation is to obtain the relief of the suffering of the personal injury caused him by the wrongful action of the Defendant, UNR-Rohn Company, and is legally justified by the Constitutional provisions and laws of the United States and the legal definitions from law dictionaries presented in this petition for writ of certiorari and motions and petitions filed in the lower Courts.

(2) See Part I, Item (6).

(3) See Part I, Item (1).

Part IV

This part of 'Reasons for Allowing the Writ' is direct rebuttal to the District Court's dismissal order (with the Court of Appeal's concurrence).

The District Court dismisses the complaint on the following basis:

(1) The complaint fails to set forth any basis of jurisdiction.

(2) It does not appear that federal law supplies an essential element of the complaint and that the complaint does not allege violation of any federal statute.

(Note - the Court did not rule on the Defendant's alternative grounds for dismissal (that the Defendant lacks the legal capacity to be sued because of state law)).

The Petitioner counter-argues dismissal point no. 1 with the following:

The 'equitable right' is defined in the 'Black's Law Dictionary' (4th Ed. - 1951 & 5th Ed. - 1979), respectively, as follows:

> "Equity also signifies an equitable right; i.e. a right enforceable in a court of equity; hence a bill of complaint which did not show that the plaintiff had a right entitling him to relief was said to be demurrable for want of equity; and certain rights now recognized in all courts are still known as "equities," from having been originally recognized only in the court of chancery. Sweet."
>
> (The emphasis added by the Petitioner)
>
> "Right cognizable within Court of Equity as contrasted with legal right enforced in Court of Law; though under rules practice in most states and in the federal courts there has been a merger procedurally between actions at law and equity. Fed. R. Civil P.2."
>
> (The emphasis added by the Petitioner)

The 'equitable right' is defined in the 'Ballentine's Law Dictionary' (3rd Ed. - 1969) as follows:

> "Equitable right is a right recognized by a court of equity and enforceable only by a court of equity, except as statutes or modern rules of practice have wiped out the distinction between an action at law and a suit in equity. Brown V Circuit Judge of Kalamazoo County, 75 Mich 274, 42 NW 831, Estate of Folwell, 68 NJ Eq. 728, 62A414."
>
> (The emphasis added by the Petitioner)

Sweet, the point of reference of the first of the above definitions, is believed to be either Charles Sweet, L.L.B., author of 'A Dictionary of English Law' published in England in 1882 or Henry Sweet, law publisher in London, England and publisher of the Charles Sweet dictionary, or both.

The belief is held on the basis that the definitions of 'equitable right' in both the Black and Sweet

dictionaries are identical, except that in the Black's the phrase 'the divisions of the High Court' (of the Sweet's) is replaced by the phrase 'the courts'.

Further, the 5th Ed. of the Black's dictionary defines 'equity' as follows:

> "Justice administered according to fairness as contrasted with the strictly formulated rules of common law. It is based on a system of rules and principles which originated in England as an alternative to the harsh rules of common law and which were based on what was fair in a particular situation. One sought relief under this system in courts of equity rather than in courts of law. The term "equity" denotes the spirit and habit of fairness, justice, and right dealing which would regulate the intercourse of men with men. Gilles V Department of Human Resources Development, 11 Cal. 3d313, 113 Cal. Rptr. 374, 380, 521 P.2d110.
>
> Equity is a body of jurisprudence, or field of jurisdiction, differing in its origin, theory, and methods from the common law; though procedurally, in the federal courts and most state courts, equitable and legal rights and remedies are administered in the same court.

> A system of jurisprudence collateral to, and in some respects independent of, "law"; the object of which is to render the administration of justice more complete, by affording relief where the courts of law are incompetent to give it, or to give it with effect, or by exercising certain branches of jurisdiction independently of them."
>
> (The emphasis added by the Petitioner)

The Petitioner contends that the 'Black's Law Dictionary', upon which he mainly bases his argument that his complaint need not state a basis of jurisdiction, is a valid source of legal information commonly used by lawyers of this (Peoria) County. At the time of the research of this petition for writ of certiorari, the Petitioner was informed by the head librarian of the law library at the Peoria County Court House in Peoria, Illinois that it is the only law dictionary available for reference in that library.

Many of the definitions of the dictionary are based on decisions of both state and federal courts in the United States.

Therefore, as rebuttal to dismissal point no. 1, the Petitioner contends that it is unnecessary for his complaint to set forth a basis of jurisdiction.

Further basis for the contention is that law in the United States is based on English law, and the Black definition of 'equitable right' appears to have come from an English dictionary.

As auxiliary counter-argument to dismissal point no. 1, the Petitioner submits U.S.C.S. 28 § 1343 (1) which states:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person to recover damages for injury to his person or property."

(The law is updated per Cumulative Supplement May, 1984 with no changes)

The Petitioner counter-argues dismissal point no. 2 of the District Court's dismissal order with the following:

> It can not be denied that parties can come into dispute with each other without the involvement of a statute. One of the functions of a Court is to settle a dispute between parties (civil action).
>
> Therefore, on the basis of the evidence presented in this petition for writ of certiorari (the provisions of the U.S. Constitution and the 'equity' and 'equitable right', as defined in legal dictionaries) this complaint (grievance or dispute) must be heard in court before a jury. (Note - the foregoing must not be construed to mean that the Petitioner is of the opinion that the Defendant, UNR-Rohn Company, has not violated statute)

Some of the Constitutional provisions and federal statutes presented in this petition for writ were presented in motions and petitions filed in the lower Courts. In the Defendant's 'Motion to Dismiss and to Strike the Amended Complaint', filed in the District Court on or about April 17, 1984, it is stated:

> "The mere invocation of federal statutes or constitutional provisions which are not relevant to the disposition of a cause of action does not prove the presence of a legitimate federal claim."

The Defendant then cites court decisions in an attempt to support his assertion.

However, neither the Defendant, nor the court decisions, show how or why the Constitutional provisions and the federal statutes cited are not relevant to this cause of action.

Further, neither the District Court nor the Court of Appeals rules on the relevancy of the provisions and statutes.

The Constitutional provisions and federal statutes (some of the statutes as auxiliary basis) which the Petitioner enters and has entered in this litigation are relevant to and supportive of this cause of action.

The Petitioner further contends that all the other evidence which he enters or has entered in this litigation is relevant to and supportive of this cause of action.

Should this Court rule on the Defendant's alternative grounds for dismissal (that he lacks the legal capacity to be sued, because of state statute), the Petitioner respectfully refers the Court to 'American Jurisprudence' Vol 27 (2nd Ed. - 1966) page 522 and Article VI of the U.S. Constitution where it states respectively in part:

> "Equity suits in federal courts and the appellate procedure therein have always been regulated exclusively by federal statutes, rules of court, and decisions, unaffected by statutes of the states."

> "any Thing in the Constitution or Laws of any State to the contrary(of the

U.S. Constitution) notwithstanding."
(The emphasis and parenthetical phrase added by the Petitioner)

The Petitioner has shown in this petition for writ of certiorari that, based on certain Articles and Amendments of the U.S. Constitution, his complaint must be heard in Court before a jury.

Article VI of that Constitution prevents any State Constitution or Law from denying that right.

The Petitioner also respectfully refers the Court to his counter-arguments to the alternative grounds for dismissal, presented in motions in the records of the lower Courts.

In conclusion of this Part IV of the 'Reason for Allowing the Writ', the Petitioner is of the opinion that due to the 'equity' and 'equitable right', the lower Courts' dismissal of the complaint has not rendered justice to the fullest possible degree.

For the foregoing reasons the Petitioner, Gordon Lee Seibold, respectfully requests that the writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit for the reversal of the lower Courts' orders and the remand of this case to the United States District Court, Central District of Illinois, Peoria Division for trial by jury with a judge presiding, other than the original, for the relief of the suffering of the personal injury caused him by the wrongful action of the Defendant, UNR-Rohn Company.

Signed Gordon Lee Seibold
(Petitioner/Plaintiff and Counsel for Himself)

Signed Sandra L. Finch
(Notary)

Date August 27, 1985

AFFIDAVIT OF SERVICE

The Petitioner and Affiant, Gordon Lee Seibold, states that on the date of the mailing (by certified mail) of this petition for writ of certiorari to the Supreme Court of the United States he will hand carry one copy thereof to the Defendant's counsel, Westervelt, Johnson, Nicoll & Keller in their office, located in the First National Bank Building at 416 Main St., Peoria, Illinois 61602.

Signed Gordon Lee Seibold
(Petitioner/Plaintiff and Counsel for Himself)

Signed Sandra L. Fench
(Notary)

Date August 27, 1985

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before

Hon. WALTER J. CUMMINGS, Chief Judge

GORDON LEE SEIBOLD,
Plaintiff-Appellant

Vs.

UNR-ROHN COMPANY,
Defendant-Appellee

U.S.C.A.-7 No. 84-2287
District Court No. 83 C 1363

March 26, 1985

This matter comes before the court for its consideration of the "MOTION FOR STAY OF MANDATE" filed herein on February 27, 1985, by pro se plaintiff-appellant.

Since the mandate in this appeal issued on February 6, 1985, we construe appellant's motion for stay of mandate is a motion to recall the mandate. We note that nothing in the issuance of this court's mandate should affect the appellants rights, including his right to petition the Supreme Court for a writ of certiorari. Accordingly,

IT IS ORDERED that the motion for stay of mandate is DENIED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

GORDON LEE SEIBOLD,
Plaintiff

V.

UNR-ROHN COMPANY,
Defendant

No. 83-1363

March 23, 1984

O R D E R

The pro se Plaintiff has filed a brief complaint alleging that the UNR-Rohn Company forced him into resigning from his employment with them, caused the denial of his rightful and due unemployment benefits by filing a false and slanderous and/or libelous report about him, and then, violating his right to reapply for employment with them. The complaint contains no factual allegations supporting his claims nor does it allege violations of any federal statute.

Defendant has moved to dismiss the complaint claiming that (1) there is no subject matter jurisdiction; and (2) that

the Defendant UNR-Rohn Company lacks the legal capacity to be sued. Because the Court finds that subject matter jurisdiction does not exist, the Plaintiff's complaint is dismissed without prejudice.

Under 28 U.S.C. §1331, a district court has original jurisdiction of all civil actions arising under the constitution, laws or treaties of the United States. An action arises under the law of the United States when federal law supplies an essential element of the claim and such federal claim appears on the face of the complaint. Nuclear Engineering Company v. Scott, 660 F.2d 241, 249 (7th Cir. 1981), cert. denied 455 U.S. 993 (1982).

The Plaintiff's complaint fails to satisfy these requirements and, therefore, this Court has no jurisdiction under 28 U.S.C. § 1331.

There also is no basis for diversity jurisdiction under 28 U.S.C. § 1332 because both Plaintiff and Defendant

are citizens of Illinois. The Plaintiff resides in Peoria, Illinois, and the corporate offices and primary manufacturing operations of UNR, Inc. of which UNR-Rohn Company is a division, are located within the State of Illinois. Accordingly, the Court has no jurisdiction under 28 U.S.C. § 1332.

The Court makes no decision with regard to the Defendant's alternative grounds for dismissal.

IT IS ORDERED that the Plaintiff's complaint is DISMISSED without prejudice and Plaintiff is given 21 days to file an amended complaint.

ENTERED: March 23, 1984.

Michael M. Mihm
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

GORDON L. SEIBOLD,
Plaintiff

V.

UNR-ROHN COMPANY,
Defendant

No. 83-1363

May 31, 1984

O R D E R

On March 23, 1984, the Court dismissed pro se Plaintiff's brief complaint for lack of jurisdiction. The Court noted that Plaintiff had failed to put forth any federal question as a basis for jurisdiction under 28 U.S.C. § 1331 and failed to set forth or indicate any diversity of jurisdiction under 28 U.S.C. § 1332. Plaintiff was given leave to file an amended complaint.

Plaintiff's amended complaint is a more detailed description of what he alleges occurred to him but still fails to set forth any jurisdictional basis. The facts as alleged indicate that the

Plaintiff was employed as a draftsman by the Defendant company. On January 21, 1982, he was handed a company memorandum which indicated that unless he agreed to learn to operate a computer terminal his employment with the company would be immediately terminated. Plaintiff claims that he was unwilling to do so and desired to remain a draftsman. Therefore, he reported his resignation to his supervisors and the appropriate "chain of command", gathered all his personal equipment and punched out on the time clock. These are his allegations supporting his claim of forced resignation or termination.

He then states that the Defendant company caused the denial of his rightful and due unemployment benefits by filing a false and slanderous and/or libelous report about him. In support of this claim, the Plaintiff alleges that the Defendant company reported to the Illinois Division of Unemployment Insurance that

the Plaintiff "walked off the job". Plaintiff argues that "walking off the job" is an unethical employment practice and has caused defamation to his character.

Plaintiff's final allegations regard his attempt to apply for reemployment with the Defendant company and that each time he attempted to do so he was informed that the company was not accepting applications for employment. However, he states that he did see the company accepting applications from other individuals while he was in the office.

The Defendant has renewed its motion to dismiss based on lack of subject matter jurisdiction. Again, it is clear that there is no basis for diversity jurisdiction. Both the Plaintiff and Defendant are citizens of Illinois and the Plaintiff specifically states in his amended complaint that he is not basing his complaint on diversity jurisdiction.

Similarly, no federal claim appears on the face of the amended complaint and it does not appear that federal law supplies an essential element of the claim. Nuclear Engineering Company v. Scott, 660 F.2d 241, 249 (7th Cir. 1981), cert. denied 455 U.S. 993 (1982). The complaint is simply a narration of what the Plaintiff alleges occurred to him. While a pro se complaint should be liberally construed by the Court, this complaint fails to set forth any basis for jurisdiction.

Accordingly, IT IS ORDERED that the Motion to Dismiss is GRANTED and the case is DISMISSED with prejudice.

ENTERED: May 31, 1984.

Michael M. Mihm
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

GORDON L. SEIBOLD,
Plaintiff

V.

UNR-ROHN COMPANY
Defendant

No. 83-1363

July 31, 1984

O R D E R

The Plaintiff, Gordon L. Seibold, has sought leave to appeal in forma pauperis (28 U.S.C. § 1915 and Rule 24(a), Federal Rules of Appellate Procedure). In reviewing the Plaintiff's request, the Court must determine if Plaintiff's claim is frivolous and deny the request if found so. Lucien v. Roegner, 682 F.2d 625 (7th Cir. 1982).

The Court has reviewed Plaintiff's claim a number of times since it was originally filed on December 30, 1983. On each of these occasions, the Court has concluded that there is no jurisdictional basis for his claim. After again reviewing the complaint, the Court finds that

because there is no jurisdictional basis for Plaintiff's complaint, the appeal is frivolous and Plaintiff's request to appeal in forma pauperis is DENIED.

IT IS SO ORDERED.

ENTERED: July 31, 1984.

Michael M. Mihm
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

GORDON LEE SEIBOLD,
Plaintiff

V.

UNR-ROHN COMPANY,
Defendant

No. 83-1363

The following is from the Court docket sheet:

Jan. 9, 1984 - ORDER fld & entered. ORDERED that Application for IFP is denied. (Pltf. notified by Clerk) (if $60 not pd. by 1/30/84 - case will be closed) (Mihm, J)

Jan. 20, 1984 - FILING FEE of $60 paid by pltf.

Jan. 20, 1984 - SUMMONS Issued to pltf. for ser.

June 21, 1984 - ORAL ORDER ENTERED. ORDERED that MO to Alter or Amend Judgment and to Hold the Case in Abeyance is hereby DENIED. (Copy of docket sheet to Pltf. and Deft's Attorney by Clerk.) (Mihm, J.)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Before

Hon. WALTER J. CUMMINGS, Chief Judge
Hon. WILLIAM J. BAUER, Circuit Judge
Hon. JOEL M. FLAUM, Circuit Judge

GORDON LEE SEIBOLD,
Plaintiff-Appellant

Vs.

UNR-ROHN COMPANY,
Defendant-Appellee

U.S.C.A.-7 No. 84-2287
District Court No. 83 C 1363

January 15, 1985

O R D E R

On consideration of pro se plaintiff's motion for leave to proceed on appeal in forma pauperis,

IT IS ORDERED that the motion is DENIED on the ground that the appeal is legally frivolous, Wartman v. Milwaukee County Court, 510 F.2d 130, 134 (7th Cir. 1975), for the reason stated by the district court.

IT IS FURTHER ORDERED that the appeal is DISMISSED.*/ 28 U.S.C. § 1915(d).

*/ Plaintiff's other motions are denied as moot.

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Before

Hon. WALTER J. CUMMINGS, Chief Judge

Hon. WILLIAM J. BAUER, Circuit Judge

Hon. JOEL M. FLAUM, Circuit Judge

GORDON LEE SEIBOLD,
Plaintiff-Appellant

Vs.

UNR-ROHN COMPANY,
Defendant-Appellee

U.S.C.A.-7 No. 84-2287
District Court No. 83 C 1363

February 21, 1985

O R D E R

This matter is before the Court on pro se plaintiff's "PETITION FOR REHEARING," which we construe as a motion to reconsider our January 15, 1985 order denying plaintiff leave to proceed on appeal and dismissing the appeal as frivolous. Plaintiff asserts that our dismissal was erroneous because he paid the docketing fees. In fact, however, the docketing fee was not paid until after the dismissal, and, in any event, does not alter our finding that the appeal is frivolous. Accordingly,

IT IS ORDERED that the motion is DENIED.

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

GORDON LEE SEIBOLD,
Plaintiff-Appellant

Vs.

UNR-ROHN COMPANY,
Defendant-Appellee

U.S.C.A.-7 No. 84-2287
District Court No. 83 C 1363

August 28, 1984

This matter comes before the court for its consideration of the following documents:

1. "MOTION TO STAY APPEAL" filed herein on August 20, 1984, by counsel for the defendant-appellee.

2. "MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STAY APPEAL" filed herein on August 20, 1984, by counsel for the appellee.

3. "MOTION TO DISMISS MOTION TO STAY APPEAL" filed herein on August 23, 1984, by pro se plaintiff-appellant, Gordon Lee Seibold.

On consideration thereof,

IT IS ORDERED that the "MOTION TO STAY APPEAL" is hereby GRANTED and this appeal is hereby held in abeyance pending further order of this court.

IT IS FURTHER ORDERED that counsel for the defendant-appellee file a status report on the status of the bankruptcy proceedings on or before September 28, 1984.

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

GORDON LEE SEIBOLD,
Plaintiff-Appellant

Vs.

UNR-ROHN COMPANY,
Defendant-Appellee

U.S.C.A.-7 No. 84-2287
District Court No. 83 C 1363

October 1, 1984

On consideration of the "STATUS REPORT" filed herein on September 28, 1984, by counsel for the defendant-appellee,

IT IS ORDERED that counsel for the appellee file an additional status report with this court on or before December 3, 1984.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

GORDON LEE SEIBOLD,
Plaintiff

V.

UNR-ROHN COMPANY,
Defendant

NOTICE OF APPEAL

FILE NO. 83-1363

July 20, 1984

Notice is hereby given that Gordon Lee Seibold, petitioner above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order (oral order denying the motion to Alter or Amend Judgment and to Hold the Case in Abeyance) entered in this action on this 21st day of June, 1984.

Signed _____

Gordon Lee Seibold
Plaintiff and Counsel
for Himself
611 Jackson St. Apt. I
Peoria, Ill. 61603

Date July 20, 1984

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

GORDON LEE SEIBOLD,
Plaintiff-Appellant

Vs

UNR-ROHN COMPANY,
Defendant-Appellee

U.S.C.A.-7 No. 84-2287
District Court No. 83 C 1363

February 6, 1985

'Dear Clerk (of the District Court):

Herewith is the mandate of this Court in the above-entitled appeal. "A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate." (F.R.A.P.41(a)). I am also returning the original record of your District Court, which was transmitted to this office for use on appeal.

Please acknowledge receipt on the enclosed copy of this letter.

Sincerely yours,

THOMAS F. STRUBBE,
Clerk'